

Regular Session, 2010

HOUSE BILL NO. 142

BY REPRESENTATIVE ABRAMSON AND SENATOR WALSWORTH

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Title VIII of Book III of the Louisiana Civil Code, to be comprised  
3 of Civil Code Articles 2660 through 2667, relative to the contract of exchange; to  
4 provide for the definition of exchange; to provide for rights and obligations of the  
5 parties to a contract of exchange; to provide for rights of the party evicted in  
6 exchange; to provide for rescission for lesion in exchange; to provide for application  
7 of the rules of sale in exchange; and to provide for related matters

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Title VIII of Book III of the Louisiana Civil Code, comprised of Civil  
10 Code Articles 2660 through 2667, is hereby amended and reenacted to read as follows:

11 Art. 2660. Exchange, definition

12 ~~Exchange is a contract, by which the parties to the contract give to one~~  
13 ~~another, one thing for another, whatever it be, except money; for in that case it would~~  
14 ~~be a sale.~~

15 Exchange is a contract whereby each party transfers to the other the  
16 ownership of a thing other than money.

17 Ownership of the things exchanged is transferred between the parties as soon  
18 as there is agreement on the things, even though none of the things has been  
19 delivered.

1                   If it is the intent of the parties that the transfer of ownership will not take  
2                   place until a later time, then the contract is a contract to exchange.

3                   Revision Comments -- 2010

4                   (a) This Article combines the provisions of Articles 2660-2661 of the  
5                   Louisiana Civil Code (1870). It does not change the law.

6                   (b) Consent alone is sufficient to effect a transfer of ownership to the things  
7                   given and received by each of the parties to the exchange. Thus, as under present  
8                   law, exchange remains a consensual contract.

9                   (c) Under a contract of exchange, each party transfers to each other the  
10                  ownership of a thing other than money. If the "thing" given by one of the parties is  
11                  money, then the transaction is a sale rather than an exchange.

12                  (d) The transfer of a thing in return for services to be rendered is not an  
13                  exchange but an innominate contract. See Louisiana Civil Code Article 1914;  
14                  *Thielman v. Gahlman*, 119 La. 350, 44 So. 123 (1907); *Hearsey v. Craig*, 126 La.  
15                  824, 53 So. 17 (1910); 10 *Planiol et Ripert*, "Traité pratique de droit civil français"  
16                  29 (1932).

17                  Art. 2661. ~~Completion of contract by consent~~ Rights and obligations of the parties

18                         ~~An exchange takes place by the bare consent of the parties.~~

19                         Each of the parties to a contract of exchange has the rights and obligations  
20                         of a seller with respect to the thing transferred by him and the rights and obligations  
21                         of a buyer with respect to the thing transferred to him.

22                         Revision Comment – 2010

23                         This Article is new. It is not intended to change the law, however. It gives  
24                         formulation to a principle implicit in Articles 2660 and 2667 (1870).

25                         Art. 2662. ~~Rescission where one party not owner of thing exchanged~~ Rights of party  
26                                 evicted

27                                 ~~If one of the exchangers, after having received the thing given to him in~~  
28                                 ~~exchange, learn that the other exchanger is not the proprietor of that thing, he can not~~  
29                                 ~~be compelled to deliver that which he had promised to give in exchange; he is only~~  
30                                 ~~bound to return the thing which he has received.~~

31                                 A person evicted from a thing received in exchange may demand the value  
32                                 of the thing from which he was evicted or the return of the thing he gave, with  
33                                 damages in either case.

## Revision Comments - 2010

(a) This Article changes the law in part by providing an evicted party to a contract of exchange the election between two remedies, without foreclosing the recoverability of damages, if appropriate.

(b) The election by the evicted party to dissolve the contract and obtain the return of the thing given by him in exchange does not prevent the recoverability of damages, if appropriate. Recoverability of damages is appropriate in accordance with the Civil Code Articles governing damages in eviction cases. See Civil Code Articles 2506 – 2509.

(c) If the immovable given in exchange by the party evicted has been transferred to a third party, the right of the evicted party to recover the immovable given by him is subject to the public records law. See Louisiana Civil Code Articles 3338-3353. It is the intent of this Article that the rights of the transferee prime the rights of the evicted party to recover the immovable in the same situation as in a sales transaction.

Art. 2663. ~~Rights of party evicted by judgment~~ Rescission for lesion in contracts of exchange

~~The exchanger, who is evicted by a judgment of the thing he has received in exchange, has his choice either to sue for damages or for the thing he gave in exchange.~~

A party giving a corporeal immovable in exchange for property worth less than one half of the fair market value of the immovable given by him may claim rescission on grounds of lesion beyond moiety.

## Revision Comments – 2010

(a) This Article changes the law in part by providing a different rule for determining when a party may claim lesion. Under Articles 2664-2666 (1870), rescission for lesion can be obtained in two situations: (1) In case of an exchange of immovable property for movables, the person that gave immovable property can obtain rescission if the movables received are not worth more than one half of the value of the immovables; and (2) When an immovable is exchanged for another immovable with a balance paid in movables. In the second situation, only the person that paid the balance is entitled to demand rescission. The exchanger that received the balance does not have an action for lesion. *Saizan v. Century 21 Gold Key Realty, Inc.*, 447 So.2d 41 (La. App. 1 Cir. 1984).

(b) Under this Article, a party that gives a corporeal immovable in exchange may claim lesion if the things that he receives in return, movable or immovable, are worth less than one half the fair market of the immovable given him.

(c) It is the intent of this Article that rescission for lesion not be allowed in the contract of exchange except as provided in this Article. The text of Article 2664 (1870), which provided that lesion was not available in exchange transactions except in the cases provided in the Civil Code, has not been reproduced as unnecessary. This omission is not intended to change the law.

1           Art. 2664. ~~Rescission for lesion~~ Application of the rules of sale

2                   ~~The rescission of the contract on account of lesion is not allowed in contracts~~  
3           ~~of exchange, except in the following cases:~~

4                   The contract of exchange is governed by the rules of the contract of sale, with  
5           the differences provided in this Title.

6                                   Revision Comments – 2010

7                   This Article amends the language of present Article 2667 without intending  
8           to change the law. The rules of the contract of sale govern exchange transactions  
9           with the differences provided in the Articles of Exchange.

10          Art. 2665. ~~Rescission for lesion where immovable exchanged for movable~~

11                   [Reserved.]

12                   ~~The rescission on account of lesion beyond moiety takes place, when one~~  
13           ~~party gives immovable property to the other in exchange for movable property; in~~  
14           ~~that case, the person having given the immovable estate may obtain a rescission, if~~  
15           ~~the movables which he has received, are not worth more than the one-half of the~~  
16           ~~value of the real estate:~~

17                   ~~But he who has given movable property in exchange for immovable estate,~~  
18           ~~can not obtain a rescission of the contract, even in case the things given by him were~~  
19           ~~worth twice as much as the immovable estate:~~

20          Art. 2666. ~~Rescission for lesion where balance paid in money or immovables~~

21                   [Reserved.]

22                   ~~The rescission on account of lesion beyond moiety, may take place on a~~  
23           ~~contract of exchange, if a balance has been paid in money or immovable [in~~  
24           ~~movable] property, and if the balance paid exceeds by more than one-half the total~~  
25           ~~value of the immovable property given in exchange by the person to whom the~~  
26           ~~balance has been paid; in that case it is only the person who has paid such balance~~  
27           ~~who may demand the rescission of the contract on account of lesion:~~

28          Art. 2667. ~~Application of general rules of sale~~ [Reserved.]

29                   ~~All the other provisions relative to the contract of sale apply to the contract~~  
30           ~~of exchange:~~

1                   ~~And in this last contract each of the parties is individually considered both~~  
2                   ~~as vendor and vendee.~~

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_